INDEX

	Page
Opinions below	1
Jurisdiction	2
Questions presented	2
Statute involved	2
Statement	2
Argument	6
Conclusion	21
Appendix	22

CITATIONS

Cases:	
American & Foreign Power Co., 15 SEC 293	18
American Power & Light Co. v. *SEC*, 329 U. S. 90	9, 12
City National Bank & Trust Co. v. *SEC*, 134 F. 2d 65	13
Columbia Gas & Electric Corp., 4 SEC 406	18
Commonwealth & Southern Corp., 11 SEC 369	11
Electric Bond and Share Co., In re, No. 83–49, S. D. N. Y., July 17, 1953	15
Electric Bond & Share Co., Holding Company Act Release No. 10640 (1951)	13
Electric Bond and Share Co., Holding Company Act Release No. 11675	15
Electric Bond and Share Co., Holding Company Act Release No. 11725	15
International Hydro-Electric System, Holding Company Act Release No. 12052 (1953)	13
International Utilities Corp., 21 SEC 283	15
New York Trust Co. v. *SEC*, 131 F. 2d 274	13
Ogden Corp., Holding Company Act Release No. 8402 (1948)	15
Ogden Corp., Investment Company Act Release No. 1876 (1953)	15
Otis & Co. v. *SEC*, 323 U. S. 624	13
Protective Committee, etc. v. *SEC*, 184 F. 2d 646	12
SEC v. *Central-Illinois Securities Corp.*, 338 U. S. 96	13
Todd v. *SEC*, 137 F. 2d 475	12
The United Corporation, 13 SEC 854	3, 16, 17
The United Corporation, Holding Company Act Release No. 11209, May 2, 1952	5
United Gas Improvement Co., 12 SEC 1080	20
Utilities Power & Light Corp., 5 SEC 483	14
Utilities Power & Light Corp., In re, 29 F. Supp. 763, appeal dismissed, C. A. 7, March 9, 1940	15

264669—53——1

Statutes:	Page
Investment Company Act of 1940 (15 U. S. C. 80a)	5
Public Utility Holding Company Act of 1935 (49 Stat. 803, 15 U. S. C. 79):	
Section 1 (c)	22
Section 2 (a) (5)	14, 22
Section 2 (a) (7)	14, 22
Section 2 (a) (9)	8, 23
Section 5 (d)	5, 8, 23
Section 11	6, 7, 16
Section 11 (b)	6, 20, 24
Section 11 (b) (1)	7
Section 11 (b) (2)	3, 8, 24
Section 11 (e)	5, 8, 16, 20, 24
Section 11 (f)	14
Section 11 (g)	8
Legislative sources:	
79 Cong. Rec. 4604	9
79 Cong. Rec. 8387	9
79 Cong. Rec. 8389	9
79 Cong. Rec. 8532	9
Hearings before House Committee on Interstate and Foreign Commerce on H. R. 5423, 74th Cong., 1st sess.	9
Hearings before Senate Committee on Interstate Commerce on S. 1725	8–9
H. Rep. No. 1318, 74th Cong., 1st sess.	8
H. Rep. No. 1903, 74th Cong., 1st sess.	9
S. 2796, 74th Cong., 1st sess. (1935)	9
S. Rep. No. 621, 74th Cong., 1st sess.	8, 9
Miscellaneous:	
Annalist (June 6, 1940)	11
Electrical World (April 13, 1940)	11
SEC 10th Annual Report	20

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In the Supreme Court of the United States

OCTOBER TERM, 1953

No. 154

EDWARD R. DOWNING, RANDOLPH PHILLIPS, AND 22,081 STOCKHOLDERS OF THE UNITED CORPORATION, PETITIONERS

v.

SECURITIES AND EXCHANGE COMMISSION AND THE UNITED CORPORATION

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE SECURITIES AND EXCHANGE COMMISSION IN OPPOSITION

OPINIONS BELOW

The findings, opinions and order of the Commission (R. 2–47), dated June 15, 1951, and June 26, 1951, have not yet been officially reported, but are set forth in the Commission's Holding Company Act Release Nos. 10,614 and 10,643. The opinion of the Court of Appeals (R. 169–194) is reported at 203 F. 2d 611.

JURISDICTION

The judgment of the Court of Appeals was entered on March 31, 1953 (R. 195–196). The petition for a writ of certiorari was filed on June 27, 1953. The jurisdiction of this Court is invoked under 28 U. S. C. 1254, made applicable by Section 24 (a) of the Public Utility Holding Company Act of 1935 (15 U. S. C. 79x(a)).

QUESTIONS PRESENTED

1. May the Securities and Exchange Commission approve a plan of compliance with Section 11 (b) (2) of the Public Utility Holding Company Act which does not provide for dissolution of the holding company but contemplates that it may continue in business as an investment company after ceasing to be a holding company?

2. Assuming that the approval of such a plan is within the power of the Commission, did the court below err in concluding that the Commission properly approved such a plan for The United Corporation?

STATUTE INVOLVED

The pertinent provisions of the Public Utility Holding Company Act of 1935 are set forth in the Appendix, *infra*, pp. 22–25.

STATEMENT

The United Corporation ("United"), a Delaware corporation organized in 1929, is registered as a holding company under the Public Utility Holding Company Act of 1935. At one time it controlled, directly or indirectly, many gas and

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electric utility companies along the Eastern seaboard and adjoining areas.[1]

On August 14, 1943, the Commission ordered United to cease to be a holding company and to limit its structure to a single class of stock, namely common stock (R. 167–168). The first part of the order was predicated upon findings by the Commission that the corporate existence of United contravened the standards of Section 11 (b) (2) (Appendix, pp. 23–24, *infra*). Recognizing that statutory compliance might be achieved if United could carry out its intention to become an investment company, the Commission did not direct that United be dissolved, as urged at that time by the Commission's Public Utilities Division.

Petitioners did not participate in the proceedings leading to that order. Neither they nor anyone else sought review of the 1943 order, and it has long since become final and not subject to review.

Since the entry of the Commission's 1943 order United has retired its preference stock by exchange for underlying portfolio securities and cash (R. 6). It now has outstanding only common stock and option warrants[2] (R. 5). Additional portfolio secu-

[1] A detailed account of the organization of United and its acquisitions is described in *The United Corporation*, 13 SEC 854, 856–864, 866–871 (1943).

[2] The plan affirmed by the court below proposes to cancel these warrants. The proposed cancellation of these warrants is the subject of a separate petition by a Committee for Warrant Holders in No. 184.

rities were disposed of through market sales and dividend distributions (R. 6). During the same intervening years various subsidiaries of United have undergone extensive reorganizations under Section 11. A number of intermediate holding companies within the vast United system were eliminated, capital structures of various companies were simplified as required by Section 11 (b) (2), and properties were divested so as to bring the remaining groups of companies within the standards of geographic integration expressed in Section 11 (b) (1). United's present portfolio, directly or indirectly, represents largely acquisitions resulting from these reorganizations (R. 5–6).

United is no longer the "corporate giant," controlling assets of over four billion dollars, described in the petition (p. 30). The complexities in the corporate structures of United's former statutory subsidiary companies, an important feature of such control, have been substantially eliminated. United's assets as of December 31, 1950, at then market values, consisted of approximately $57,600,000 of securities and $2,200,000 in cash and Government bonds (R. 38), including as much as 10% of the voting stock in only two companies. Consummation of the plan has resulted, or will result, in a reduction of the securities to approximately $40,000,000, with less than $10,000,000 in any one issue, and an increase of the cash and Government bonds to approximately

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$18,000,000, based upon the same market values and the withdrawal rights actually exercised.[3] United will then not have as much as 5% of the voting stock of any public utility company, and will make such further divestments as are necessary to ensure that none of its investments represents a controlling interest in any public utility company.

United's present comprehensive plan under Section 11 (e) (Appendix, pp. 24–25, *infra*) provides, *inter alia,* for further divestments of securities in order that United will cease to be a holding company as required by the Commission's 1943 order. It contemplates that United's registration as a holding company will be terminated upon a future application by United under Section 5 (d) of the Act (Appendix, p. 23, *infra*) to be made after such divestments, and that thereafter United will continue to do business as an investment company registered under the Investment Company Act of 1940, 15 U. S. C. 80a. (R. 6–7.) Stockholders who did not wish to retain their interests in United as an investment company have been afforded by the plan an opportunity to withdraw by exchanging their shares of United common stock for

[3] United has been authorized to invest such cash, subject to limitations imposed by the Commission to prevent acquisitions in former subsidiaries and to limit the amounts that might be invested in any one company until United shall have ceased to be a holding company. *The United Corporation*, Holding Company Act Release No. 11209, May 2, 1952.

portfolio securities or cash (R. 9–25, 45–47). The Commission found that the plan, as amended in accordance with the Commission's findings, was fair and equitable to the persons affected thereby and was necessary to effectuate the provisions of Section 11 (b) (2) of the Act and the Commission's 1943 order thereunder (R. 46). The court below affirmed (R. 195–196).

ARGUMENT

It is difficult to trace the thread of petitioner's arguments among the maze of innuendo, quotation out of context, and *ad hominem* attack which relate neither to the facts nor to the text of statutory provisions. Because Commissioners who have long ceased to hold office had conferred with United's management a decade ago, had rejected staff views as to what then appeared the most practical solution to United's problems, and had authorized an alternative solution which has proven feasible, petitioners argue that the Commission should have been required to reject the instant plan no matter how well adapted to correcting the remaining respects in which United fails to meet the standards of Section 11 (b), and no matter how fair to United's stockholders. The only legal issue which can fairly be said to be presented by the petition is an insubstantial contention that Section 11 of the Holding Company Act carries with it an inexorable "death sentence" to be administered without reference to the possi-

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bility of accomplishing the statutory objectives through less drastic means.[4]

United's proposal to comply with Section 11 of the Holding Company Act by ceasing to be a holding company, after simplification of its security structure and severance of all control and affiliate relationships with its one-time statutory subsidiaries, is consistent with the language of the statute, the legislative history, the 1943 order of the Commission, and Commission action in comparable cases. There is nothing in the Act which precludes United, after ceasing to have public utility subsidiaries, from acquiring, in the course of its business as an investment company, control over subsidiaries which are not public-utility companies as defined in the Act. The extent of the divestments necessary to make United cease to be a holding company presents only an issue of fact, consideration of which the Commission deferred until after consummation of the divestments proposed in the instant plan.

1. The Holding Company Act neither prescribes inevitable dissolution of a holding company nor prevents a former holding company, after it ceases to be a holding company, from engaging in any lawful business, including that of an investment company. This is clear under the language of the statute. Thus, Section 11 (b)

[4] This contention is directly counter to petitioner Phillips' own proposed plan (R. 84–87), which would have continued United as an open-end, diversified investment company.

(1) directs the Commission to "limit the operations" of each holding-company system "to a single integrated public-utility system" and related interests, and Section 11 (b) (2) directs the Commission to require a registered holding company to take "such steps" as the Commission finds "necessary to ensure that the corporate structure or continued existence" of the company does not unduly "complicate" the holding-company system.[5] This is confirmed by Sections 11 (e) and 11 (g), which specifically deal with plans "for the divestment of control," and by Section 5 (d) (Appendix, *infra*, p. 23), which provides for terminating the registration of a holding company found to have ceased to be such.[6]

Further, the legislative history makes clear that Congress specifically envisaged the investment company route as a method of compliance with Section 11 (b).[7] The original bills (S. 1725 and H. R. 5423) concededly permitted the Commission to approve plans whereby holding companies were transformed into investment companies.[8]

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[5] Section 2 (a) (9) defines a "holding-company system" to mean "any holding company together with all its subsidiary companies."

[6] Of course, a plan under Section 11 (e), or an order under Section 5 (d), may prescribe conditions necessary to prevent the recurrence of abuses which the Act seeks to correct.

[7] This legislative history is set forth more fully in the Brief for the United Corporation in Opposition, pp. 18–21.

[8] See, Message of the President, March 12, 1935, H. Rep. No. 1318, 74th Cong., 1st Sess., p. 2; S. Rep. No. 621, 74th Cong., 1st Sess., p. 2; Hearings before the Senate Committee

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Section 11 (b) of S. 2796, the substitute Senate bill, required that each holding company be reorganized or dissolved whenever the Commission found that it contravened the standards of the section. The Senate Report accompanying this bill stated:

> Existing holding companies will be obliged (i) to divest themselves of any interest in properties not appropriate to a geographically and economically integrated public-utility system, or (ii) to cease to be holding companies by divesting themselves of all control over the public-utility companies in which they are interested and become investment companies, or (iii) to distribute their securities and assets equitably among their security holders.[9]

This section of the Senate bill was greatly watered down by House amendments, and was compromised in conference, resulting in a "relaxation" in various respects of the Senate bill, "designed to meet the House desire to provide further flexibility." See H. Rep. No. 1903, 74th Cong., 1st Sess., pp. 68–71.

As this Court stated in *American Power & Light Co.* v. *S. E. C.*, 329 U. S. 90, 114–115:

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on Interstate Commerce on S. 1725, 74th Cong., 1st Sess., pp. 210, 496; Hearings on H. R. 5423 before the House Committee on Interstate and Foreign Commerce, 74th Cong., 1st Sess., p. 333.

[9] See S. Rep. No. 621, 74th Cong., 1st Sess., pp. 32–33; see also *id.*, pp. 11, 13–14; 79 Cong. Rec. 4604, 8387–8, 8389–90, 8532.

But the House of Representatives insisted upon the elimination of § 11 (b) (3) and the bill finally reported out by the joint conference committee deleted that provision. A further change was made at this time so that § 11 (b) (2), instead of specifying reorganization or dissolution as the remedies, gave the Commission power to require "such steps" as it might find necessary to ensure compliance. Section 11 (e) was also changed to permit a voluntary plan "for the divestment of control, securities, or other assets, or for other action by such company or any subsidiary company thereof."

Thus the compromise bill which became law omitted the unconditional provision of § 11 (b) (3) for the elimination of all holding companies within five years, substituting therefor the "great-grandfather clause" of § 11 (b) (2), *and gave the Commission discretion to determine the necessary steps for compliance instead of specifying reorganization or dissolution.* There is nothing to indicate that the framers of the compromise bill meant to forbid reorganization or dissolution as remedies which the Commission might choose. Indeed, the fact that these two remedies had been previously specified is strong evidence that they were in the minds of those who wrote the portion of § 11 (b) (2) now under consideration and that those persons merely wished not to restrict the Commission to those two remedies; *they thus gave*

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> *the Commission discretion to choose whatever remedy it felt necessary.* This legislative history, when combined with the various references to dissolution in other parts of § 11, compels the conclusion that dissolution is one of the remedies contemplated by § 11 (b) (2) and that its choice falls within the allowable area of the Commission's discretion. [Emphasis supplied.][10]

Petitioners argue (Pet. 45–54), however, that the transforming of holding companies into investment trusts, though contemplated in the earlier version of the bill, was not included in the draft of the bill as enacted, and refer to the Commission's own decision which states that the Act "embodies no general program for * * * the transformation of remaining holding companies into investment trusts." *Commonwealth & Southern Corp.*, 11 SEC 369, 378 (1942). But, as the foregoing legislative history indicates, transformation of a holding company into an investment company is one permissible method of compliance under the Act, and the *Commonwealth & Southern* case did not express a contrary view. That decision merely indicated that, since under the Act as finally adopted holding companies may be permitted to survive as such, under stand-

[10] Transformation of a holding company into an investment company as one method of compliance with Section 11 was also noted by Judge Jerome N. Frank, while Chairman of the Commission. See his articles in *Electrical World*, April 13, 1940, p. 4, and in *The Annalist*, June 6, 1940, p. 779.

ards prescribed by Section 11 (b), the transformation of holding companies into investment companies did not play as dominant a role in the statutory scheme as it did in the earlier draft which contemplated the ultimate elimination of all holding companies.[11]

Moreover, there is no inconsistency of the decision below with any of the cases upon which petitioners rely. In the *American Power & Light* case (Pet. 34–35), this Court indicated that Section 11 must be construed in the light of Section 1 (c) of the Act (Appendix, *infra,* p. 22), which provides "for the elimination of public-utility holding companies except as otherwise expressly provided in this title." 329 U. S. at 113. Petitioners argue that the word "elimination" means dissolution. But that decision, as the court below noted (R. 188), held that dissolution is a possible, not an inevitable, remedy.[12] Petitioners'

[11] Indeed, in a footnote to that portion of the *Commonwealth & Southern* case upon which petitioners rely the Commission expressly states, after a review of the legislative history, "This is not to say that the final enactment prohibited such mergers, consolidations or transformation." 11 SEC at 378 n. 26.

[12] The Commission's brief in that case merely argued that it had statutory authority to order dissolution of intermediate holding companies in the Electric Bond and Share system on the basis of findings that these companies were no more than a mere set of books and because it appeared, among other things, unlikely that these holding companies could be made to serve any useful economic purpose.

This is equally applicable to *Todd* v. *SEC*, 137 F. 2d 475 (C. A. 6), and *Protective Committee, etc.* v. *SEC*, 184 F. 2d

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further reliance (Pet. 36–43) upon *Otis & Co.* v. *SEC,* 323 U. S. 624, *SEC* v. *Central-Illinois Securities Corp.,* 338 U. S. 96, *City National Bank & Trust Co.* v. *SEC,* 134 F. 2d 65 (C. A. 7), and *New York Trust Co.* v. *SEC,* 131 F. 2d 274 (C. A. 2), is likewise without any basis. These cases involved questions of distributions to security holders of holding companies where dissolution had been ordered by the Commission or proposed by the company as the method of compliance with the statutory mandate. None of petitioners' authorities remotely suggest that transformation to an invesment company is not a proper method for ceasing to be a holding company within the terms of the Act.

2. Overruling petitioners' contentions (cf. Pet. 66), the court below found that there was ample evidentiary support for the Commission's findings that the plan was appropriate to meet United's present problems, and, accordingly, there was no need to recanvass the 1943 issues (R. 190). Petitioners contend, however, that even if it were per-

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646 (C. A. 2), which involved the dissolution of International Hydro-Electric System. (See Pet. 40–41, 42–43.)

The Commission has recently issued a notice and order for hearing on an application to modify the order of dissolution against this company and to permit it to become an investment company. See *International Hydro-Electric System,* Holding Company Act Release No. 12052 (1953).

See also *Electric Bond and Share Co.,* Holding Company Act Release No. 10,640 (1951), modifying for change of circumstances a dissolution order entered with reference to another Bond and Share subsidiary holding company.

missible for United to become an investment company, the Commission was in error in approving a plan under which United proposes to become a nondiversified investment company, since such an investment company may acquire control of nonutility companies. Petitioners argue (Pet. 69–71) that a holding company whose existence as such must be terminated under Section 11 (b) (2) should not be permitted to control and manage nonutility companies. But the statutory definition of "holding company" in Section 2 (a) (7) is limited to companies having public utility subsidiaries; and public utility companies are narrowly defined in Section 2 (a) (5) as gas and electric operating companies. Once it is recognized that a holding company may transform itself into an investment company, there is no policy which requires that the holding company be limited in its choice of the type of investment company it may wish to become. The Investment Company Act of 1940 permits both diversified and nondiversified investment companies, and as an investment company United would be subject to the regulatory scheme of the 1940 Act, as would any other investment company.

3. Contrary to petitioners' assertion (Pet. 25–26), the Commission has consistently construed the Act as permitting transformation of a holding company into an investment company as one method of compliance. In *Utilities Power & Light Corp.*, 5 SEC 483, 516 (1939), the Commission

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approved under Section 11 (f), and the District Court approved under Section 77B of the Bankruptcy Act, a plan of reorganization permitting the successor company to divest its utility interests and become an investment company.[13] A similar plan under Section 11 (e) was approved by the Commission for the conversion of General Water Gas & Electric Company into an investment company. See *International Utilities Corp.*, 21 SEC 283 (1945). In *Electric Bond and Share Company,* Holding Company Act Releases Nos. 11675 and 11725, enforced In re *Electric Bond & Share Company,* S. D. N. Y., Civil Action No. 83–49, order entered July 17, 1953, the Commission and the enforcement court approved a plan contemplating the conversion of a registered holding company into an exempt holding company, with no utility subsidiaries in the United States, which would continue in business as an investment company.

[13] See also *In re Utilities Power & Light Corp.*, 29 F. Supp. 763 (N. D. Ill.), appeal dismissed, C. A. 7, March 9, 1940. The successor company, Ogden Corporation, registered as a holding company and after divestment of its utility interests obtained an order under Section 5 (d) that it had ceased to be a holding company. See *Ogden Corp.*, Holding Company Act Release No. 8402 (1948). Some time thereafter its dissolution was considered by its management, wholly apart from any requirements of the Holding Company Act. That program has been abandoned, and Ogden has pending a proposal under the Investment Company Act to continue in existence as the controlling stockholder of a non-utility company. *Ogden Corporation*, Investment Company Act Release No. 1876, June 17, 1953.

Correspondingly, petitioners' citation (Pet. 43–44) of the alleged contrary position of the Public Utilities Division of the Commission in 1942 is without substance. For that Division had not urged dissolution of United on the grounds that as a matter of law it was the only remedy permitted by the Act (cf. Pet. 43–44). On the contrary, the staff had recognized divestment of control rather than dissolution as an appropriate means of complying with the requirements of Section 11.[14] The reasons which persuaded the staff to urge dissolution were the vagueness of United's plan under Section 11 (e), and the apparent lack of equity for the common stock of United at that time.[15] Events since that time have shown that United has been able to retire its preference stock and yet preserve a substantial equity for the common stock,[16] and the proposed transformation into an investment company was made subject to a provision in the plan that dissenting stockholders might withdraw their pro

[14] In its brief before the Commission the staff stated (p. 44): "Divestment of control, where it is in fact accomplished, is thus a possible solution to each of these major problems specified in Section 11 and, not unnaturally, played a major part in the discussions of how Section 11 was expected to function."

[15] See *The United Corporation*, 13 SEC 854, 880–881, 884–886, 893–898 (1943).

[16] The record shows that United's assets, exclusive of Government securities and cash, had an indicated market value of over $57 million, or $4.12 per share (R. 38).

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rata interest in United on a fair and equitable basis. In short, intervening events have demonstrated the feasibility of an investment company program for United, although petitioners argue their case, and refer now to the staff's earlier position, as though it were still 1943.

The fact that many more companies have been dissolved indicates that in most cases other methods of compliance have appeared more feasible or more advantageous to security holders. In withholding a dissolution order in respect of United, the Commission merely gave United an opportunity to demonstrate, what has since been shown, that it was possible for it to simplify its stock structure and to transform itself into an investment company in a manner which would be fair to its stockholders.[17]

4. Petitioners complain of certain conferences between members of the Commission and representatives of United prior to the issuance by the Commission of its 1943 findings and order, and argue (Pet. 55–68) that such conferences were improper and deprived petitioners of an op-

[17] Petitioners contend (Pet. 34–38) that dissolution is required because in 1943 the Commission had found that United violated the "great-grandfather" clause of Section 11 (b) (2) (13 SEC at 876). This section prohibits more than two tiers of holding companies in any one holding-company system. Petitioners ignore the fact that, as a consequence of the reorganization of United's subsidiaries and the liquidation of intermediate holding companies, that aspect of Section 11 (b) (2) has been resolved.

portunity to challenge those findings. Petitioners sought to inquire into these informal conferences, but a motion to that effect was denied by the court below (R. 174–175, 196). The court denied the motion because that order was no longer subject to review and, moreover, was "fair on its face," in accordance with the facts and the law (R. 175).

The Commission most earnestly rejects petitioners' implication of bad faith and improper influence in respect of its former members. The informal conference device has been adopted by the Commission as standard procedure in the administration of the Act, and the Commission's refusal to permit discovery of testimony concerning what was said at these conferences is designed to encourage the free exchange of views and the exploration of possible avenues of compliance. See *Columbia Gas & Electric Corp.*, 4 SEC 406, 422 (1939); *American & Foreign Power Co.*, 15 SEC 293, 299–300, fn. 5 (1944). In 1943 the only active participants in the proceedings, in respect of the issue of dissolution, were the staff of the Commission and United. Petitioners did not appear in that proceeding; indeed, petitioner Phillips at that time regarded the possibility of dissolution as a "threat" to United, and in his proxy letter to stockholders in February 1943 he had urged the election of a management which would "cooperate with the Securities and Exchange Com-

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mission in working out United's problems under the Holding Company Act" (R. 69).[18]

In the court below, petitioners attempted to distinguish between pre-hearing conferences and post-hearing conferences, contending that once there had been a public hearing there was no further room for informal conferences between the Commission and the company. This is a wholly unworkable distinction in the light of the problems actually involved in effecting a transformation of the utility industry with a minimum of unnecessary friction and litigation. Many of the plans which have effected compliance with the Holding Company Act were shaped in part as a result of informal negotiations while hotly contested issues were pending, either at the administrative level or on review. Conferences which might be post-trial with respect to one proceeding would be pre-trial for another. It may be noted that 10 months elapsed between the oral argument and the Commission's 1943 decision. In addition to the changes in United's management, there had been significant changes in the

[18] The only stockholders who appeared in the pre-1943 proceedings were mainly concerned with the inequitable distribution of voting power as between the preference and common stockholders of United, and with the fact that the market value of United's assets at that time was below the liquidating preference of United's preference stock, and supported the suggestion that United should be recapitalized on a basis of a single class of stock. The 1943 order, as already noted, did require such recapitalization.

future outlook as a result of market improvement and, *inter alia*, of the successful consummation of a Section 11 (e) plan for United's then important subsidiary, The United Gas Improvement Co.[19] That plan was a turning point in the pattern of voluntary compliance with Section 11 (b) of the Act. It marked the beginning of a realization by holding company managements of the advantages which might flow to their stockholders from complying with Section 11, evidenced by a dramatic appreciation in the value of the UGI common stock in consequence of the plan. See SEC, Tenth Annual Report (1943–1944), p. 97. It was in this context that the discussions with United's new management occurred. The gist of the conferences, as described by Mr. Hickey, was that he sought to persuade the Commission that it would be feasible for United to eliminate its senior securities and its control over utility subsidiaries, and to salvage an equity for the common stock, without dissolution.[20] There was no

[19] *United Gas Improvement Co.*, 12 SEC 1080 (March 18, 1943).

[20] The Commission has not admitted or denied Mr. Hickey's statements as to what occurred, in view of its policy of not permitting the record of formal proceedings to be cluttered with a rehash of such discussions; nor did Commission counsel in argument in the court below attempt, contrary to this policy, to go outside the record and describe the extent to which staff members participated in any such conferences. Petitioners quote inaccurately and out of context (p. 59) what was there said.

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impropriety, and certainly no prejudice to petitioners, in the holding of those conferences.

CONCLUSION

The decision below is correct. There is no conflict of decisions nor any need for further review. Accordingly, the petition for a writ of certiorari should be denied.

Respectfully submitted.

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JULY 1953.

APPENDIX

Pertinent Statutory Provisions

The Public Utility Holding Company Act of 1935, 49 Stat. 803, 15 U. S. C. 79, *et seq.*, provides in pertinent part as follows:

Section 1. * * *

* * * * *

(c) When abuses of the character above enumerated become persistent and widespread the holding company becomes an agency which, unless regulated, is injurious to investors, consumers, and the general public; and it is hereby declared to be the policy of this title, in accordance with which policy all the provisions of this title shall be interpreted, to meet the problems and eliminate the evils as enumerated in this section, connected with public-utility holding companies which are engaged in interstate commerce or in activities which directly affect or burden interstate commerce; * * *

Sec. 2. (a) * * *

(5) "Public-utility company" means an electric utility company or a gas utility company.

* * * * *

(7) "Holding company" means—

(A) any company which directly or indirectly owns, controls, or holds with power to vote, 10 per centum or more of the outstanding voting securities of a public-utility company or of a company which is a hold-

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ing company by virtue of this clause or clause (B), unless the Commission, as hereinafter provided, by order declares such company not to be a holding company; and

(B) any person which the Commission determines, after notice and opportunity for hearing, directly or indirectly to exercise (either alone or pursuant to an arrangement or understanding with one or more other persons) such a controlling influence over the management or policies of any public-utility or holding company as to make it necessary or appropriate in the public interest or for the protection of investors or consumers that such person be subject to the obligations, duties, and liabilities imposed in this title upon holding companies.

* * * * *

(9) "Holding-company system" means any holding company, together with all its subsidiary companies, * * *

SEC. 5. * * *

* * * * *

(d) Whenever the Commission, upon application, finds that a registered holding company has ceased to be a holding company, it shall so declare by order and upon the taking effect of such order the registration of such company shall, upon such terms and conditions as the Commission finds and in such order prescribes as necessary for the protection of investors, cease to be in effect. The denial of any such application by the Commisison shall be by order.

SEC. 11. * * *

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(b) It shall be the duty of the Commission, as practicable after January 1, 1938:

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(2) To require by order, after notice and opportunity for hearing, that each registered holding company, and each subsidiary company thereof, shall take such steps as the Commission shall find necessary to ensure that the corporate structure or continued existence of any company in the holding-company system does not unduly or unnecessarily complicate the structure, or unfairly or inequitably distribute voting power among security holders, of such holding-company system. In carrying out the provisions of this paragraph the Commission shall require each registered holding company (and any company in the same holding-company system with such holding company) to take such action as the Commission shall find necessary in order that such holding company shall cease to be a holding company with respect to each of its subsidiary companies which itself has a subsidiary company which is a holding company. * * *

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(e) In accordance with such rules and regulations or order as the Commission may deem necessary or appropriate in the public interest or for the protection of investors or consumers, any registered holding company or any subsidiary company of a registered holding company may, at any time after January 1, 1936, submit a plan to the Commission for the divestment of control, securities, or other assets, or for other action by such company or any

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subsidiary company thereof for the purpose of enabling such company or any subsidiary company thereof to comply with the provisions of subsection (b). If, after notice and opportunity for hearing, the Commission shall find such plan, as submitted or as modified, necessary to effectuate the provisions of subsection (b) and fair and equitable to the persons affected by such plan, the Commission shall make an order approving such plan; and the Commission, at the request of the company, may apply to a court, in accordance with the provisions of subsection (f) of section 18, to enforce and carry out the terms and provisions of such plan. * * *

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